

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON CATTLEMEN'S
ASSOCIATION,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Defendants.

And

PUGET SOUNDKEEPER ALLIANCE,
IDAHO CONSERVATION LEAGUE, and
SIERRA CLUB,

Defendant-
Intervenors.

No. 2:19-CV-0569-JCC

JOINT STATUS REPORT AND
STIPULATED MOTION TO FURTHER
STAY PROCEEDING

NOTE ON MOTION CALENDAR:
JUNE 30, 2021

Pursuant to Local Rules 7(d)(1) and 10(g) and in accordance with this Court's Order, Dkt. No. 99 (May 24, 2021), Plaintiff, Defendants ("the Agencies"),¹ and Intervenor-Defendants hereby submit this joint status report and jointly move to further stay the above-captioned proceeding until October 1, 2021. The Parties have good cause for this request:

1. In this proceeding, Plaintiff is challenging three rules promulgated by the Agencies that define the phrase "waters of the United States" in Section 1362(7) of the Clean Water Act: the Clean Water Rule: Definition of "Waters of the United States," 80 Fed. Reg. 37,054 (June 29, 2015) ("2015 Rule"), the Definition of "Waters of the United States" – Recodification of Pre-Existing Rules, 84 Fed. Reg. 56,626 (Oct. 22, 2019) ("2019 Rule"), and The Navigable Waters Protection Rule: Definition of "Waters of the United States," 85 Fed. Reg. 22,250 (Apr. 21, 2020) ("2020 Rule").

2. Plaintiff initiated this lawsuit on April 16, 2019, first challenging the 2015 Rule. Dkt. No. 1. Plaintiff then moved to preliminarily enjoin the 2015 Rule. *See* Dkt. No. 15. On December 30, 2019, the Court denied Plaintiff's first motion for preliminary injunction on the grounds that the Repeal Rule rendered the motion "moot." Dkt. No. 61.

3. Plaintiff then filed two supplemental complaints. First, on December 20, 2019, Plaintiff added claims to its complaint, challenging the Repeal Rule. Dkt. No. 60. Second, on May 4, 2020, Plaintiff added claims challenging portions of the NWPR. Dkt. No. 72.

4. On July 31, 2020, this Court stayed Plaintiff's claims with respect to the 2015 Rule and Repeal Rule. Dkt. No. 86. The Court noted that the Parties "may move to lift the stay following the Court's ruling on the merits of Plaintiff's claims regarding the 2020 Rule." *Id.*

5. Plaintiff filed a motion to preliminarily enjoin, in part, the NWPR on June 15, 2020. Dkt. No. 77. That motion is still pending.

¹ EPA Administrator Michael Regan and Acting Assistant Secretary of the Army for Civil Works Jaime Pinkham are automatically substituted for their predecessors in office pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

6. On August 27, 2020, Defendants filed a motion to consolidate this case with *Puget Soundkeeper Alliance, et al. v. United States Environmental Protection Agency, et al.* (2:20-CV-0950-JCC). Dkt. No. 87. That motion is also still pending.

7. There are no other outstanding motions or deadlines before the Court in this matter.

8. On January 20, 2021, President Biden issued an Executive Order entitled “Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” 86 Fed. Reg. 7037 (Jan. 25, 2021) (“EO 13990”). In conformance with the Executive Order, the Agencies began reviewing a number of regulations promulgated in the last four years, including the NWPR at issue in this case.

9. In light of this directive, on February 2, 2021, the Parties filed a stipulated motion to stay the proceeding for 90 days to accommodate the Agencies’ review of the NWPR. Dkt. No. 94. The Court granted the motion on February 8, 2021, staying the case until May 1, 2021. Dkt. No. 95.

10. On April 29, 2021, the Agencies filed a motion to continue the stay until July 1, 2021. Dkt. No. 97. The Agencies noted that Michael Regan had only recently been sworn in as EPA Administrator and that the review of the NWPR was ongoing. *Id.* To provide sufficient time to allow the new Administrator to make an informed decision regarding the NWPR, the Agencies asked that the Court extend the stay until July 1. *Id.* While Plaintiff initially opposed the motion, Plaintiff subsequently informed the Agencies it would no longer oppose the motion, once it learned that the Agencies were prepared to make an announcement regarding the NWPR by early June. Dkt. No. 98. Ultimately, on May 24, 2021, the Court granted the motion to continue this proceeding until July 1, 2021. Dkt. No. 99.

11. On June 9, 2021, the Agencies issued a press release stating that, after reviewing the NWPR, they have decided to initiate new rulemaking to revise the definition of “waters of the United States.” See <https://www.epa.gov/newsreleases/epa-army-announce-intent-revise-definition-wotus> (last accessed June 25, 2021).

1 12. In light of this new rulemaking, the Parties all agree that the stay in the proceeding
 2 should be extended another three months, until October 1, 2021, when the Parties can then
 3 reassess how this litigation should proceed. By October 1, 2021, the Parties will file a joint status
 4 report and proposal(s) to further govern proceedings. Granting this motion will not prejudice any
 5 party and would promote judicial economy.

6 13. To be sure, the Agencies have filed motions to remand the NWPR without vacatur
 7 in a number of other proceedings where the NWPR is being challenged. *See Conservation Law*
 8 *Foundation v. EPA*, 20-cv-10820-DPW (D. Mass.) at Dkt. No. 113 (June 9, 2021); *South*
 9 *Carolina Coastal Conservation League, et al. v. Regan, et al.*, 2:20-cv-01687-BHH (D.S.C.) at
 10 Dkt. No. 140 (June 21, 2021); *Waterkeeper Alliance, Inc., et al. v. Regan, et al.*, 3:18-cv-03521-
 11 RS (N.D. Cal.) at Dkt. No. 111 (June 22, 2021); *Navajo Nation v. Regan, et al.*, 2:20-cv-00602-
 12 MV-GJF (D.N.M.) at Dkt. No. 32 (June 22, 2021). Notwithstanding these filings, the Parties
 13 here agree that it would be appropriate to further hold this litigation in abeyance for now. The
 14 Agencies may decide to file a similar motion to remand the NWPR in this proceeding at a later
 15 date.

16 14. Accordingly, the Parties request to stay this proceeding until October 1, 2021.
 17 This stipulated motion is without prejudice to the right of any party to seek a further stay at the
 18 end of the abeyance period. The Parties retain the right to move this Court to lift the stay prior
 19 to the end of the abeyance period if circumstances warrant resuming litigation.

20 15. For the foregoing reasons, the Parties respectfully request that the Court stay this
 21 proceeding until October 1, 2021. The Parties will file a joint status report and proposal(s) to
 22 further govern proceedings by no later than October 1, 2021.

23 Dated: June 30, 2021

Respectfully submitted,

/s/ Hubert T. Lee

HUBERT T. LEE

SONYA J. SHEA

Trial Attorneys

Environmental Defense Section

U.S. Department of Justice

P.O. Box 7611

Washington, DC 20044

(202) 514-1806 (Lee)

(303) 844-7231 (Shea)

Hubert.lee@usdoj.gov

Sonya.Shea@usdoj.gov

COUNSEL FOR DEFENDANTS

/s/ Anthony L. Francois

ANTHONY L. FRANÇOIS

DANIEL M. ORTNER

Pacific Legal Foundation

930 G Street

Sacramento, California 95814

Telephone: (916) 419-7111

Fax: (916) 419-7477

Email: AFrancois@pacificlegal.org

Email: DOrtner@pacificlegal.org

COUNSEL FOR PLAINTIFF

/s/ Janette K. Brimmer

JANETTE K. BRIMMER

Earthjustice Northwest Office

705 2nd Ave., Suite 203

Seattle, WA 98104

Telephone: (206) 343-7340

Email: jbrimmer@earthjustie.org

COUNSEL FOR DEFENDANT-
INTERVENORS

[Proposed] Order

It is ORDERED that the above-captioned proceeding be stayed until October 1, 2021.

It is further ORDERED that the Parties file a joint status report and proposal(s) to further govern proceedings by no later than October 1, 2021.

IT IS SO ORDERED.

Hon. John C. Coughenour
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2021, I filed the foregoing using the Court's CM/ECF system, which will electronically serve all counsel of record registered to use the CM/ECF system.

/s/ Hubert T. Lee

Hubert T. Lee